The City of New York

POLICE DEPARTMENT

October 29, 2012

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Kisha Padilla
Tax Registry No. 921286
Police Service Area 8
Disciplinary Case No. 2011-6418

The above-named member of the Department appeared before the Court on July 17, 2012, charged with the following:

1. Said Sergeant Kisha Padilla, assigned to the PSA 8, on or about and between June 1, 2010 and April 10, 2011, knowingly associated with Person B a person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities.

P.G. 203-10, Page 1, Paragraph 2(c) – PUBLIC CONTACT PROHIBITED CONDUCT

2. Said Sergeant KishaPadilla, assigned to thePSA 8, on orabout September 8, 2010, within the vicinity ofBronx County, failed toproperly safeguard her Department issued RestrictedParkingPermit resulting in the unauthorizeduse of said permit by Person A.

P.G. 219 01 – DEPARTMENT PROPERTY

3. Said Sergeant Kisha Padilla, assigned to the PSA 8, on or about and between August 2, 2011 and January 5, 2012, having changed said Sergeant's home phone number, did fail and neglect to notify her Commanding Officer by submitting form Change of Name, Residence or Social Condition (PD 451-021), as required.

P.G. 203-18, Page 1, Paragraph 3 – EMERGENCY NOTIFICATION PROCEDURES / RESIDENCE REQUIREMENTS
GENERAL REGULATIONS

4. Said Sergeant Kisha Padilla, assigned to the PSA 8, on or about and between January 4, 2011, failed to notify the Internal Affairs Bureau/Operations Desk after witnessing the arrest of Person A and having had her residence searched by Federal Law Enforcement Agents. (*As amended*)

P.G. 212-32 Page 1, Paragraph 2 OFF DUTY INCIDENTS INVOLVING UNIFORMED MEMBERS OF THE SERVICE

The Department was represented by Javier Seymore, Esq., Department Advocate's Office. Respondent was represented by Andrew Quinn, Esq., The Quinn Law Firm.

Respondent, through her counsel, entered a plea of Not Guilty to Specification Nos. 1 and 4. She pleaded Guilty to Specification Nos. 2 and 3 and testified in mitigation of the penalty. A stenographic transcript of the trial-mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification Nos. 1 and 4. Having pleaded Guilty to Specification Nos. 2 and 3, Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Keith Geller as a witness.

Sergeant Keith Geller

Geller was assigned to the Internal Affairs Bureau (IAB). On September 8, 2010, Geller was assigned to investigate Respondent based upon an arrest of Person A by members of the Drug Enforcement Task Force (DETF). [redacted] Person A was

scheduled to meet a confidential informant (CI) at a location within the confines of the 50 Precinct. Person A was supposed to deliver "what was believed to be heroin" when he was placed under arrest upon meeting with the CI. At the time of arrest, Person A was driving a Honda Accord. A Department parking permit belonging to Respondent was recovered from the vehicle. The permit was assigned to a Honda Odyssey, however. A union-affiliation card and mini-shield identifying Respondent were recovered from Person A.

Geller testified that after the arrest, the primary residence of Person A and Respondent was put up as part of Person A's bail package. Two other individuals, Person B and Person C, also were involved in putting money together for the bail package.

Geller stated that Person B was arrested in February 2010 for Assault in the Third Degree, arising from a domestic incident between him and his wife. He received a conditional discharge in June 2010. Geller obtained telephone records of Person B and Respondent and found that there were communications between them. Between August 28, 2010, and November 10, 2011, the two exchanged 11 phone calls. Between August 28, 2010, and April 11, 2011, there were 75 text messages between them.

In an official Department interview, Respondent admitted that she was aware of Person B's arrest. Respondent was informed by Person B's wife at a gathering in the summer of 2010 that the wife had an incident with Person B in which he was arrested.

Geller testified that on January 4, 2011, Person A was arrested by members of the Drug Enforcement Administration (DEA) and charged with money laundering. The arrest took place at the residence of Person A and Respondent. After placing Person A under arrest, Geller testified, DEA agents asked Respondent for her consent to search the house. She consented. A ledger, money counter and a heat-sealant device were recovered from the home.

Geller stated that the arrest and search commenced sometime after 2100 hours on January 4, 2011. He was unsure when it concluded. The Department did not receive a notification from Respondent regarding the search. DETF members, however, upon being notified by the DEA, contacted the Operations Unit at 1200 hours on January 5, 2011, regarding the arrest and search of Respondent's residence. Geller contended that Respondent never put the Department on notice that her house was searched by DEA agents and that Person A was taken into custody there.

On cross examination, [redacted] Geller acknowledged that the investigation concluded that Respondent had no knowledge of Person A's criminal activities. There was no evidence that she had any involvement with his wrongdoing.

Geller agreed that the Honda Accord involved in Person A's September 2010 DETF arrest was registered to Respondent. Her parking permit was in the dashboard. Respondent informed Geller that she left the Accord, with the permit, in her driveway that day, and used her other car, the Honda Odyssey, to go to work. Geller agreed that Respondent was unaware Person A had taken her Accord that day, and that Person A owned a Smart car.

After the arrest, Geller testified, DETF members went to Respondent's residence and asked for permission to search the house. She consented. Geller acknowledged that this was the first time Respondent became aware of Person A's criminal activity. She contacted the Operations Unit the day after the arrest.

Geller agreed that Person B was a friend of Person A. They had business relations together. Person A worked for a company that was a subcontractor on the Second Avenue Subway project.

Geller acknowledged that Person B and Respondent raised funds to post bail for Person A after his September 2010 arrest.

Geller agreed that Respondent was informed about Person B's arrest by Person B's wife, Person D. She told Respondent this at a barbecue, before Person A's arrest. At the time of the conversation the outcome of the arrest was unknown, but it was later determined that Person B received a conditional discharge. He was ordered to pay restitution and an order of protection was issued. The 11 phone calls between Respondent and Person B happened after the barbecue conversation. They had no in-person contact. The investigation did not reveal who texted whom.

Geller acknowledged that Person B and Person A were arrested in April 2011 for a robbery that occurred in a barbershop within the confines of the 45 Precinct. Geller admitted that when Respondent became aware of this, and Person B called her on the phone, she responded by telling him that he could not call her, and hung up. Geller acknowledged that Respondent assisted the 45 Detective Squad in trying to locate Person A by calling him and providing telephone numbers of his friends.

Geller agreed that Respondent was at home with her two children when Person A pulled into the driveway on January 4, 2011. Geller admitted that the DEA agents arrived without a warrant. They were hoping that Respondent, as a New York City Police Department sergeant, would grant them permission to search the residence. Geller acknowledged that Respondent granted the agents unfettered access to her house. At her official Department interview, Respondent stated that the heat sealant was a Christmas gift from Person A's aunt for which the couple had no use, so they stuck it in the garage. As for the ledger, Geller testified both that Respondent was unaware of it and believed Person A used it for legitimate work purposes.

Geller agreed that the heat sealant actually was a machine to seal vegetables in cellophane to keep them fresh.

Geller agreed that it was standard protocol when conducting a search of a residence that law enforcement did not allow the residents to make phone calls until the search was completed. Geller did not know if the DEA agents actually instructed Respondent not to make any calls.

IAB was notified at 1200 hours on January 5, 2011, of the DEA search. After IAB was notified, Respondent was contacted shortly thereafter and subsequently placed on modified duty.

On re-direct examination, Geller said that Respondent was modified at 1708 hours, a five-hour gap from the DEA's notification of IAB.

Geller testified that the April 2011 arrest of Person A involved three victims that were shot in a barbershop co-owned by him. Person A was accused of drilling two individuals through the hand with a power drill. Person B was arrested as well for his involvement.

Geller discovered during Respondent's official interview that her home phone number listed on the change of name, residence or social condition form (PD 451-021) was incorrect.

On re-cross examination, Geller admitted that the money laundering charge against Person A stemming from the January 2011 arrest was dropped. "The evidence that was obtained was given to the Assistant US Attorney [AUSA] of the Eastern District in regards to his September 2010 arrest."

Upon questioning by the Court, Geller stated that he was unaware of whether Person B pleaded or was found guilty of the February 2010 domestic-incident charge.

Geller testified that Person B's case in the barbershop incident was still pending. Person A was remanded and turned over to federal custody in June 2011. He was expected to plead guilty in federal court. The victims stated that Person A was asking them where the money was.

Respondent's Case

Respondent testified on her own behalf.

Respondent

Respondent was assigned to Police Service Area (PSA) 8. [redacted] They had two daughters together. In September 2010, Respondent and Person A resided in a home [redacted] that they bought together. Their two daughters and Person A's 17-year-old son lived there too.

Person A graduated from City College of New York and worked as a civil engineer for HDR. He also had a partnership in a barbershop business. He was earning nearly $100,000 a year. Person A appeared to be an experienced, successful and popular professional. He had been working as an engineer for 13 to 14 years. Person A had received certifications and awards for his engineering work. Respondent's Exhibit (RX) A was a photograph of Person A with Mayor Michael Bloomberg at a Gracie Mansion award reception for HDR. RX B depicted Person A working on a construction site.

Respondent testified that she owned a Honda Odyssey and a Honda Accord. Person A used his Smart car to get to and from work. Person A did not use the Accord often. Respondent had a Department parking permit for the Odyssey because she typically drove that vehicle to work.

On September 8, 2010, Respondent thought that her parking permit was in the Odyssey. It was, however, discovered in the Accord by the officers that arrested Person A. Department personnel advised Respondent of Person A's arrest, asked her some questions, and advised her of the criminal activities Person A was involved in. Prior to that date, Respondent had no reason to

suspect Person A was involved in any criminal activity. She only knew that Person A had taken the Accord because it was not in the driveway, but the Smart car was.

After Person A's arrest, Respondent called her commanding officer (CO). Respondent was directed by the information she gave. She next called her union, then an attorney affiliated with the union. The next day, she notified the Operations Unit.

Person A continued to reside at their residence "on and off." Even though it was a stressful situation, Respondent required help with child care and needed Person A's support because he was still working and making money.

Respondent stated that Person B was a friend of Person A since their youth. They worked near each other. Respondent did not know Person B socially. She had met Person D but they were not close. Nevertheless, in the summer of 2010, while at a barbecue, Person D was "just telling like a group" certain information and Respondent overheard. She learned that Person B had been arrested as a result of a domestic incident. It appeared to have been a dispute regarding the residence. Respondent did not know if Person B was convicted of any crime or in which court the matter was handled.

After the barbecue, and before Person A's September 2010 arrest, Respondent might have seen Person B twice in passing but never had anything to do with him. After the arrest, Person B attempted to call Respondent. She told him that she could not talk to him.

Respondent acknowledged that she would socialize with Person B if he was with Person A. Respondent noted that most of the calls between her and Person B were one or the other looking for Person A. She never called him about his arrest, to chat or to "ask about his family's living conditions."

Respondent found it hard to believe that there were 75 text messages between her and Person B. Any texts would have consisted of one or the other looking for Person A. There was no "fraternization or socialization" in the texts.

In April 2011, Respondent learned that Person A was involved in the barbershop assault and robbery. Approximately two weeks after the incident, Respondent found out that Person B was involved as well. Person B called and texted her. She told him on the phone that she could not talk to him. The call was from a different number and there was no name of caller listed. When she answered the phone, she did not know that Person B was on the line.

Respondent stated that law enforcement left her house after the search at approximately 0300 hours on January 5, 2011. The children and a babysitter were home and awake while the search occurred. She wanted to call someone from the Department at the outset but the agents would not allow it. Two hours later, she wanted to call her attorney "because he knows the situation." Again, the agents would not allow it, saying that the attorney would forbid them to keep searching.

After the search was completed, Respondent testified, the agents in charge told her they were going to notify IAB. They shook her hand and commended her on her cooperation.

Once the agents left, Respondent put her three-year-old daughter, who was "screaming outrageously," back to sleep. It took a little while. She waited until around 0600 hours to call her command and speak to her CO. Respondent was informed that the CO was working a 4x12 tour. Respondent then asked for the day off. At about 1300 hours, IAB called to inform her that they knew about the incident. Person A was released the next morning.

Respondent described the "ledger" as actually a notebook or memo book used by Person A to jot down notes and plans at construction sites. She had not been aware of the money counter.

In April 2011, Respondent became aware that Person A was wanted in connection with the barbershop robbery. While at work, she was directed to report to the 45 Precinct. Upon arrival, she was informed that Person A might have been involved in an incident and was asked if she knew anything about it. Respondent assisted in the investigation by trying to call Person A to see if she can get him to "come in." Respondent attempted to call Person A a couple of times but was unable to do so, so she just left a message. She was aware that her calls likely would lead to his arrest.

Respondent admitted that she neglected to complete a change of name, residence or social condition form. She changed her phone number around the time of Person A's last arrest "just because of the whole situation." She did not want certain people knowing her number. Respondent made the change on her ten-card (Force Record), but conceded that she would have had to go to a precinct to make a change on the former form because she did not have access to Department computers at her current assignment (i.e., while on modified duty at a PSA). She did not do so.

Person A pleaded guilty in the federal matter and was sentenced to 10 years in prison. The robbery and assault charges from the barbershop incident were still pending in state court.

Respondent testified that her Honda Accord was repossessed after Person A's last arrest. She possessed it through a lease, but there was a provision in the contract that if the car was used in furtherance of a crime, the lessor could break the lease and take back the vehicle, but Respondent still had to make payments.

As a result of Person A's arrest and loss of income, the marital home was in foreclosure. She expected to be out by August 2012. She was unsure where she would live. She did not

receive any financial support from Person A or his family, even though her stepson, Person A's son, was living with her.

On cross examination, Respondent admitted that she was not exactly sure when Person B obtained her number. She agreed that it was common for her to call Person B and for Person B to call her looking for Person A. She also commonly called other friends of Person A to look for him. Respondent admitted it was common for her to call Person A's other friends to look for him as well. Respondent denied that it was difficult to find Person A. "[S]ometimes after work he would go straight to the business." Person B and Person A worked on the same block and often ate lunch together, so she felt she could reach Person A through Person B.

Respondent claimed not to recall whether the barbecue in the summer of 2010 was at her house or someone else's. Person D indicated that she had Person B arrested over a domestic incident. Respondent acknowledged that she did not ask Person D any questions because Person D was not talking to her directly. Respondent might have told Person A about it but did not think it was important because she was not close friends with Person B or his wife. Respondent noted that she did not think it was a major situation because Person D said she and Person B were getting along and things were good.

Respondent agreed that her parking permit was assigned to the Honda Odyssey. She disagreed that she was supposed to remove the plaque and take it inside when the vehicle was left in a driveway. Respondent was now aware that each vehicle had to have its own permit.

Respondent acknowledged that after Person A's September 2010 arrest, Person B and Person C helped her with a bail package to get Person A out of jail. Respondent did not know how Person B found out about Person A's arrest, but suggested that he could have gotten that information from

his sister. When the bail package was put together, everyone put up their homes as collateral. They were all in a room together, with an attorney, deciding who could put up what for bail.

Respondent agreed that the January 2011 search of her residence was an off-duty incident. She contended that she did not know that she had to call Operations. Respondent admitted that "there was no specific reason to be honest" for waiting to contact her CO. It was just a terrible night, emotionally, physically and mentally.

On re-direct examination, Respondent testified that Person A was charged in federal court in September 2010. The attorney present at the bail-package meeting was an AUSA. Respondent met Person B at the U.S. Attorney's Office (USAO).

Upon questioning by the Court, Respondent stated that she did not ask Person B or Person C to come to the USAO, but Person A might have. Person A's lawyer notified her about coming. Respondent never asked Person B or Person C to put money or property up for bail.

Respondent testified that after she found out that her CO was working a 4x12 tour on the day after the search, she still planned on calling her in the afternoon. IAB called Respondent before she could do so.

FINDINGS AND ANALYSIS

The facts of this case are mostly undisputed. [redacted] Person A was employed as a civil engineer. He graduated from City College and worked at a firm that had at least one public contract, to work on the Second Avenue Subway. Respondent believed that this was Person A's occupation and had no reason to think otherwise. Person A even was invited to Gracie Mansion and had his

picture taken with the mayor at a reception honoring his firm's work on behalf of the community (RX A).

Respondent's confidence apparently was misplaced. In September 2010, Person A was arrested by the Department's Drug Enforcement Task Force on federal charges relating to the attempted delivery of heroin to a CI. Although Person A had his own car, that day he was driving Respondent's Honda Accord. This had Respondent's parking permit on the dashboard. Person A also was in possession of a Department-member union card and mini-shield, both identifying Respondent. The matter was reported to IAB and Respondent contacted Operations.

A bail package was arranged for Person A. Three individuals put up their houses as security for his release: Respondent, Person C, and Person B. Person B was a longtime friend of Person A. Respondent was acquainted with Person B but she denied that they socialized outside of Person A. Person B had Respondent's phone number, however. Between August 28, 2010, and November 10, 2011, the two exchanged 11 phone calls. Between August 28, 2010, and April 11, 2011, there were 75 text messages between them. Respondent explained this by saying that they would call each other often to locate Person A.

Respondent testified that in the summer of 2010, before Person A's arrest, she was at a barbecue at which she learned some pertinent news. She was part of a group conversation in which Person B's wife, Person D, was speaking. Person D indicated that Person B had been arrested in a domestic incident involving her. Respondent did not learn the exact charge upon which he was arrested. It was undisputed that Respondent did not learn any additional information about the matter.

The investigation into Person A continued. On January 4, 2011, the DEA arrested him and searched the marital home with Respondent's consent. Additional charges of money laundering

were brought against Person A, although these later were dropped. Respondent was home at the time and the search took several hours. It was undisputed that the DEA agents instructed Respondent that she was not allowed to make any phone calls, even to her attorney. The search concluded at approximately 0300 hours on January 5, 2011. Respondent put her young daughter, who was upset, to bed. At 0600, she called not IAB or the Operations desk, but her CO. Respondent learned that her CO was scheduled to perform a 4x12 tour that day and that she should call back. Before she did so, however, the DEA informed IAB of the incident.

Specification No. 1

In the first specification, Respondent is charged, pursuant to Patrol Guide § 203-10 (2)(c), with criminal association with regard to her relationship with Person B. A literal reading of the facts leads to a finding of guilt. Respondent certainly knew that Person B was a "person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities," as she knew that Person B had been arrested in a domestic incident with his wife. She also "associated" with Person B by having extensive phone contact with him concerning Person A.

The Department and this tribunal, however, have recognized that such a literal reading is outside the purpose of the rule. The procedure is in place because associating with organized crime members and drug dealers is a corruption hazard. Thus, not every contact with an individual that has an arrest record falls within the prohibition. See *Case No. 70314/95*, p. 13 (July 1, 1996). On the other hand, the rule must be written broadly to encompass unforeseen situations.

Many factors must be considered in answering the question of whether a criminal association falls within the prohibition. These include the criminal charge itself, whether it had been adjudicated at the time of the association, the nature and length of the association, and any other surrounding circumstances. See *70314/95*, pp. 13 14.

These factors work themselves out differently in various cases. *Case No. 75757/00* (Oct. 30, 2000) pointed out that the presumption of innocence is not enough to defeat the charge. In that particular case, the member knew that narcotics had been recovered from the individual's bedroom, which should have clued him in to the likelihood that the individual was "reasonably believed" to have been engaged in criminal activity.

The nature of the criminal charge and the kind of contact both are extremely important. The more that the charge can be said to have a risk of corruption, the likelier it is that the association will be said to be prohibited. Likewise, the higher the frequency or affinity of the contact, the likelier it is that prohibition will lie.

Thus, in *Case No. 79363/03* (Jan. 25, 2005), the member was getting his motorcycle back from his mechanic, who was a Hell's Angel that had been arrested for robbery and assault. Based upon the notoriety of the case, there was an appearance of impropriety and the member should have ceased all contact.

In contrast, in *Case No. 85743/09* (June 5, 2012), the Court found that a single arrest of the Department member's 31-year boyfriend for possession of a marijuana joint, reduced to disorderly conduct, did not establish criminal association. Similarly, in Matter of Borrelli v. Kelly, 59 A.D.3d 164, 165 (1st Dept. 2009), the Appellate Division found that infrequent contact with the member's lifelong friend after his arrest on driving while intoxicated and misdemeanor

assault charges, disposed of by the traffic infraction of driving while ability impaired, did not constitute substantial evidence that the member had violated the criminal-association procedure.

In the instant case, Respondent knew at the very least that Person B had been arrested for an incident with his wife. That is a serious offense, notwithstanding the fact that Department members also have been arrested on similar charges. Respondent also had reason to believe that the accusation against Person B was true because his wife spoke of them "working things out," i.e., Person B was trying to arrange some kind of disposition or otherwise make things right. Respondent's association with Person B created the appearance of impropriety.

Furthermore, the amount of contact between Respondent and Person B, within the context of their relationship, was extensive. They were not longtime friends or romantic partners, yet they exchanged 11 phone calls and 75 text messages over the course of 7 to 15 months. This was more than fleeting or incidental contact, and the Court rejects Respondent's assertion that the two merely wanted to talk to or locate Person A at those times. It was "not the kind of unavoidable association that arises when a family member gets into trouble," see *75757/00*, p. 4, i.e., after Person A's arrests.

This matter is somewhat similar to *Case No. 77424/01* (June 9, 2003). There, the individual had been arrested for issuing bad checks, but the Department member continued to accept phone calls from him. The member also helped him get bailed out by co-signing a loan taken out by the individual's fiancée.

Similarly, here, Respondent knew that Person B had been arrested for a domestic incident, but continued to accept phone calls and texts from him. As such, Respondent is found Guilty of Specification No. 1.

Specification No. 4

Respondent is charged in the fourth specification with failing to notify IAB or the Operations Unit, pursuant to Patrol Guide § 212-32, after the January 4, 2011, arrest of Person A and the execution of a search at the marital home by DEA agents.

It was not disputed that the incident constituted an unusual police occurrence within the meaning of the Patrol Guide. Respondent asserted that she made reasonable efforts to contact the Department. She stated that the DEA forbade her to make any phone calls during the search. The Department's investigator agreed that this would be a standard instruction from agents executing a search. Respondent explained that after the agents left in the early morning hours of January 5, 2011, she put her daughter to bed (the girl was up crying). She herself was emotionally and physically exhausted. At 0600 hours, she called her CO, not the Operations Desk as directed by the first Note on page 1 of Patrol Guide § 212-32. The CO was unavailable and Respondent was advised to call back later. Before she did so, however, IAB was informed of the incident by the DEA. Respondent apparently did not get in touch with her CO.

This gap in time constituted a failure to notify Operations promptly. The Court is mindful of the fact that Respondent was not complicit in any way with the activities of Person A. If, however, she had the time to put her daughter to bed, she had time to call Operations and let them know of the incident, as was her responsibility as a member of this Department. See *Case No. 86193/10*, pp. 14-15 (June 9, 2011) (although member mainly was victim in domestic incident, she failed to contact Operations yet had the wherewithal to call her command and ask for emergency day off). Accordingly, the Court finds Respondent Guilty of Specification No. 4.

Specification Nos. 2 & 3

Having pleaded Guilty to the second and third specifications, Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 1, 1998. Information from her personnel file that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of several offenses that came to light after the arrest of her Person A. Person A was arrested by the Department's Drug Enforcement Task Force, in Respondent's Honda Accord, after attempting to deliver heroin to a CI. Her vehicle contained her Department parking permit, actually assigned to her Honda Odyssey. Although Person A had his own car, that day he took the Accord. While Person A very well might have done so to insulate himself from law enforcement scrutiny, the Department did not assert that Respondent knew he took her car, notwithstanding her official-interview admission that she left the plaque in the Accord and took her Odyssey to work that day. Nor was there any proof that it was improper for Respondent to leave the permit in her vehicle, parked in her driveway or on the street next to her property, as this could not have caused any kind of parking advantage. Cf. *Case No. 2010 1708* (Nov. 15, 2011) (pleading-guilty member left the plaque in his car, and it was parked legally, but he had lent the car to his girlfriend).

Person A's arrest apparently led to increased contacts between his friend, Person B, and Respondent. Person B was one of the people to put up his residence as collateral to secure Person A's release on bail. Yet, during a time that she was aware Person B had been arrested for assaulting his

wife, Respondent kept in contact with Person B, exchanging voluminous phone calls and text messages.

Person A was arrested again a few months later by the DEA, this time at the marital home. The DEA also searched the home. Respondent failed to notify the Department promptly of this incident.

The criminal association with Person B "was not an association or misconduct of an inherent criminal nature." See *77424/01*, Police Comm'r's mem. (reducing penalty to 20 vacation days from 20 days and probation for member that remained in contact with his friend who had been arrested for bad checks, and that helped the friend's girlfriend with bail).

Furthermore, Respondent's failure to notify the Department promptly of Person A's re-arrest and the DEA search of their home was mitigated by the fact that the DEA informed the Department of the same shortly thereafter. Respondent credibly testified that she attempted to contact her CO several hours later but she was not in. See *Case No. 85981/09*, p. 9 (Apr. 25, 2011) (5 days for officer who failed to notify Department after becoming aware that she was the subject of child protective services investigation; the allegation was untrue and actually concerned her sister leaving the officer's son home alone, the officer cooperated fully with that investigation, and no harm came to Department from failure to notify); *Case No. 75895/00*, p. 13 (Aug. 28, 2002) (5 days for detective who failed to notify Department that he was defendant on a criminal court order of protection; order was served during his arraignment, at which IAB was present).

Respondent has a good record with the Department and she has already suffered extensively as a result of conduct of which she was unaware. It is important to note that the IAB investigator agreed that Respondent had no knowledge of Person A's criminal activity.

Person A was sentenced to 10 years in prison. The lessor of the Accord, which Person A used in the commission of a felony, seized the car but required Respondent, under the terms of the lease, to pay the remainder of the loan. The marital home is now in foreclosure.

30 vacation days and placement on a year of dismissal probation, as recommended by the Department, is excessive both when viewed against precedent and with respect to the misconduct committed by Respondent. She is not likely to re-offend, and proof of this can be found in her complete cooperation and even affirmative assistance with the investigation into Person A. Nor is the misconduct so egregious that dismissal probation is necessary as a deterrent. Viewed in totality, Respondent made minor mistakes in the midst of a major federal criminal investigation into someone else.

As such, the Court recommends that Respondent forfeit 20 vacation days.

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED
FEB 04 2013
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
SERGEANT KISHA PADILLA
TAX REGISTRY NO. 921286
DISCIPLINARY CASE NO. 2011-6418

In 2010, 2011 and 2012, Respondent received an overall rating of 3.5 "Highly Competent/Competent" on her annual performance evaluation. She was rated 4.0 "Highly Competent" in 2009. She has received one medal for Excellent Police Duty. [redacted]

Respondent has no prior formal disciplinary record.

For your consideration.

David S. Weisel
by [signature]
David S. Weisel
Assistant Deputy Commissioner Trials